

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

James A. Johnson, Sr. # 209541,)	C/A NO. 3:06-1293-CMC-JRM
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
SC Department of Corrections,)	
Director John Ozmint; Warden Douglas)	
Taylor; Assistant Warden C. Burton;)	
Assistant Warden Rivers; Major C.)	
Felder; and Mental Health Counselor)	
Phillip Daley,)	
)	
Defendants.)	
)	

Plaintiff, proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983 on May 1, 2006. On May 25, 2006, Defendants filed a motion to dismiss because Plaintiff had failed to sign the complaint. The court entered a *Roseboro* order on May 31, 2006, advising Plaintiff that a failure to respond to the motion to dismiss could result in the dismissal of the action. On June 7, 2006, the court ordered that Plaintiff bring his case into proper form (by submitting a signed copy of the complaint) on or before June 30, 2006. Plaintiff submitted a signed copy of the complaint and a response to Defendants' motion to dismiss on June 16, 2006. On August 25, 2006, Defendants filed a second motion to dismiss and the court issued a second *Roseboro* order and advised Plaintiff of the importance of responding to the second motion to dismiss. Plaintiff did not respond. On September 8, 2006. Defendants filed a motion for summary judgment and the court issued a third *Roseboro* order. Plaintiff did not respond and has not filed any materials in opposition to Defendants' motion for summary judgment. In accordance with 28 U.S.C. § 636(b) (1)(B) .and Local Civil Rule 73.02 (B)(2)(d), D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pre-trial proceedings and a Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

On November 14, 2006, the Magistrate Judge issued a Report recommending that Defendants' May 25, 2006 motion to dismiss (Doc. 13) be denied as moot; Defendants' August 3, 2003 motion to compel (Doc. 26)¹ be denied; Defendants' August 25, 2006 motion to dismiss (Doc. 27) be denied; and Defendants' September 8, 2006 motion for summary judgment (Doc. 29) be granted. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections and the time for doing so has expired.

After reviewing the complaint, the motions, the response, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

¹On August 3, 2006, Defendants filed a motion to compel discovery responses.

IT IS THEREFORE ORDERED that Defendants' May 25, 2006 motion to dismiss (Doc. 13) is DENIED as moot; and it is

FURTHER ORDERED that Defendants' August 3, 2006 motion to compel (Doc. 26) is DENIED; and it is

FURTHER ORDERED that Defendants' August 25, 2006 motion to dismiss (Doc. 27) is DENIED; and it is

FURTHER ORDERED that Defendants' September 8, 2006 motion for summary judgment (Doc. 29) is GRANTED.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
December 22, 2006

C:\temp\notes\FFF692\06-1293 Johnson v. SC Dept. of Corr., et al. - granted SJ - dmb.wpd